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POLISH-RUSSIAN SMALL
BORDER TRAFFIC
IN THE CONTEXT
OF RUSSIA-EU RELATIONS

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This article sets out to analyse the Polish-Russian agreement on small border traffic in the context of relations between the European Union and the Russian Federation. The analysis focuses on the role of the Kaliningrad region of the Russian Federation in relations between the EU and Russia and conditions of the Polish-Russian agreement on small border traffic. The methodology employed is based on analysing primary (documents) and secondary (scholarly publications, press articles) sources. The article also addresses the “Kaliningrad question” — one of the most important issues in Russia-EU relations. The analysis shows that the signing of the Polish-Russian agreement on small border traffic should be viewed as a success. Based on the agreement, the inhabitants of borderlands in Poland and Russia (the Kaliningrad region) can cross the border without obtaining an entry visa. For the inhabitants of the borderlands, the agreement brings a range of significant advantages relating to the intensification of social, cultural, touristic, and economic contacts. It is worth noting that the agreement is one of very few examples of EU — Russia cooperation, especially in context of deterioration thereof observed over the last several years.

Key words: small border traffic, Kaliningrad region, European Union, Russian Federation

The Polish-Russian local border traffic agreement (LBT) is a culmination of a multi-year process associated with the development of relationships between the European Union and the Russian Federation in the visa dialogue and cross-border cooperation. The agreement is a step forward and natural consequence of the developing relations between Russia and the EU. It is in this political context that the issue is to be addressed¹. On the other hand, the

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¹ For more a detailed history of the EU-Russian relations see: [20; 22].

agreement on local border traffic directly results from a number of legislative measures undertaken by the EU institutions as well as envisaged by the Polish law, which provides the legal basis for the unique LBT solution on the Polish-Russian border. Thus, the agreement and decisions taken in accordance with its provisions can be considered in two contexts:

- Political context — issues related to the Kaliningrad region over the past 20 years. The Kaliningrad region was one of the key issues in the relationships between the European Union and Russian Federation, especially in the process of enlargement of the European Union to the east in 2004. Both Russian and European officials believe that Kaliningrad is to play a special role, that of a pilot region in the EURussia relations. The LBT agreement is a part of the broader political cooperation, entailed by the EU enlargement to the east. As a result, Russia is directly involved in the European cooperation.

- Legal context — accession of Central and East European countries to the European Union and the Schengen agreement zone is associated with many difficulties in the functioning of the eastern borders of the new member states which became the EU's external borders. In order to solve these problems, legal steps improving the efficiency of the EU external borders were taken. One of them was the Agreement on local border traffic, the adoption and implementation of which was preceded by many years of legislative and administrative efforts. The Polish-Russian agreement on LBT is the result of a number of legislative decisions made at the institutional and legislative levels.

The article aims to analyze these two contexts of the Agreement on local border traffic at the Polish-Russian border, review legislative and political procedures as well as demonstrate the significance of the Kaliningrad region in the EU-Russian relationships².

The uniqueness of the Kaliningrad region as an integral part of the EU-Russian relations and the westernmost part of Russia should be emphasized. As a result of political changes at the turn of the 1980s and 1990s, the region became an enclave surrounded by Poland and Lithuania. After the fifth official EU enlargement in 2004 and the Poland's and Lithuania's joining the Schengen zone (2007), the Kaliningrad region — due to the introduction of the visa regime at the Polish-Russian and Lithuanian-Russian borders — became a region separated from other regions of the Russian Federation by member states of the European Union. In the 1990s the Russian authorities

² The purpose of this article is not provide a comprehensive analysis of the impact of the local border traffic on the Polish-Russian cross-border cooperation because the relatively short term of the agreement makes it impossible to objectively assess its results. In addition, there is no need to submit a local border traffic agreement in the context of the Polish-Russian relations at the level of the states, when the LBT is not a separate topic, but is rather considered in the context of the EU-Russian relations. The social and economic impact of the local border traffic at the Polish-Russian border goes far beyond the scope of this article, but in order to obtain reliable scientific evidence, large-scale statistical and sociological studies should be conducted.

often raised concerns related to the isolation of the region following the eastward enlargement of the European Union and the North Atlantic Treaty Organization [23; 19]. One of the ways to mitigate the negative consequences of the EU enlargement was to join local border traffic agreements, which meant that the visa regime of the Schengen Agreement would become unnecessary.

The Kaliningrad region in the European Union — Russian Federation relations

Undoubtedly, issues related to the Kaliningrad region are an integral part of the EU-Russian relations. It is proved by various conventions:

- signing the Partnership and Cooperation Agreement (PCA) — 24 June 1994. The Agreement came into force in October 1997;
- cooperation during and following the meetings of the Cooperation Council between the European Union and the Russian Federation (1998);
- adoption of the Common Strategy of the European Union on Russia — June 1999;
- adoption of the Medium-Term Strategy for Development of Relations between the Russian Federation and the European Union (2000—2010) (1999);
- the EC report ‘The EU and Kaliningrad’ — January 2001;
- the European Commission Communication on Relations with Russia (February 2004).

The Kaliningrad issue was directly or indirectly touched upon in political relations between the European Union and the Russian Federation at the turn of the 1980s and 1990s. The TACIS initiative (Technical Assistance to the Commonwealth of Independent States), which was launched in 1991, became the first project of the European Union in response to the demise of the Soviet Union. The programme was mainly aimed at promoting free market and cross-border cooperation mechanisms in the territories established after the collapse of the USSR. Then, on 24 June 1994, the Partnership and Cooperation Agreement (PCA) was signed, and it entered into force in October 1997. In accordance with the Agreement, regular meetings of the EU-Russia Cooperation Council were held in 1998 [1].

Issues related indirectly to the Kaliningrad region were addressed in numerous policy papers on the EU-Russian relations, which were elaborated and adopted at EU-Russian fora. The first paper was the Common Strategy of the European Union on Russia approved at the summit of the European Council in Cologne on 4 June 1999. The policy took the shape of a unilateral declaration, on the basis of which cooperation between the European Union and Russia was built during the following four years. The paper provided for a common vision of the EU’s cooperation with the Russian Federation as well as key objectives of bilateral relations. One of the key intentions contained in the paper and related to the Kaliningrad region was to enhance Europe’s cohesion through regional and cross-border cooperation [17, s. 1—7].

Another important document for the EU-Russian relations and cooperation on the Kaliningrad region was the Medium-Term Strategy for the Development of Relations between the Russian Federation and the EU (2000—2010) published in October 1999. The paper provided a number of guidelines concerning EU-Russia relations. Among those, there were vital recommendations related to the Kaliningrad region, i.e. strengthening of cohesion, abolishing trade discrimination towards Russia, increasing funding under the Tacis programme, cross-border cooperation and provision of compensation related to the planned EU enlargement to the east [7].

The Kaliningrad issue was also addressed in other documents and discussed at numerous events that constituted a part of the EU-Russian relations. The European Commission report 'The EU and Kaliningrad' published in January 2001 identified a number of risks and benefits for the Kaliningrad region resulting from the European Union enlargement eastwards [5, s. 347]. In turn, the Communication from the Commission to the Council and the European Parliament on relations with Russia (February 2004) emphasised the need to establish friendly relations with the Russian Federation, in particular through the creation and development of cross-border cooperation areas. The document also provided liberalisation of the visa policy towards Russia and its border areas depending on the progress in the modernisation of the economic and political systems [7, s. 28—29]. During the next few years EU-Russia relations were built against the backdrop of negotiations on a new Partnership and Cooperation Agreement (PCA 2) since the old one expired at the end of 2007.

Since 2005, cooperation between the European Union and the Russian Federation has developed in the framework of the so-called four common areas which include: economic affairs, internal affairs and justice, external security as well as research and education. Cooperation in these areas was announced in May 2003 at the summit of the EU-Russia summit in St. Petersburg. In 2010, the Partnership for Modernisation, a new initiative of the European Union and Russia, was launched [4]. In 2011, bilateral cooperation in the framework of the so-called area of freedom, security and justice started³, one of the aims of which was to follow up on negotiations concerning the visa regime liberalisation which began in 2007⁴.

Today the Kaliningrad region is one of the most relevant issues in the relations between the EU and Russia. The Kaliningrad issue was discussed at different EU-Russia events. Kaliningrad was on the agenda one way or another:

- the Kaliningrad region's accessibility after the EU enlargement in 2004;
- liberalisation of the visa policy for residents of the Kaliningrad region as well as residents of other regions of the Russian Federation;

³ The so-called space of freedom, security and justice, a part of the European Union policy carried out since the 1970's of the twentieth century as reflected in Section V of Part III of the Treaty on the Functioning of the European Union.

⁴ Dialogue on a visa-free regime was launched in 2007 as a result of the summit Russia — European Union in Samara (17—18 May 2007).

- development of the scientific, social and economic cooperation between the Kaliningrad region and the neighbouring EU countries;
- Kaliningrad as a pilot region of the Russian Federation and the European Union;
- concerns raised by the Russian party due to increasing difference between the Kaliningrad region and other regions of Russia as a result of cooperation with the European Union.

The issues related to the Kaliningrad region were addressed in the EU-Russia relations especially prior to the EU enlargement in 2004. Poland's and Lithuania's accession to the European Union and the subsequent need for a visa at the Kaliningrad region's border had a decisive impact on the situation in the enclave and, consequently, the relations between the EU and Russian Federation until 2004. The Russian party raised the issue of significant economic losses that followed the separation of the region from the rest of the Russia by the Schengen area borders, and as a consequence, the emergence of the transit problem through the EU territory [2; 15, p. 13—17].

Introduction of a visa regime for the citizens of the Russian Federation including the Kaliningrad region residents led to the necessity of obtaining a visa if a Russian citizen wanted to travel from one part of Russia to another. It should be emphasised that the EU enlargement and the problem of transit caused considerable controversy and became a 'bargaining chip' in Russia's negotiations with the EU. The Party proposed the introduction of visa requirement benefits and exemptions for certain categories of citizens including residents of the Kaliningrad region. It was at that time that the Russia's 'undeclared' but visible objective was the introduction of a full visa-free regime between the Russian Federation and European Union⁵.

The Kaliningrad issue was also raised in the negotiations on the development of the scientific, social and economic cooperation between the European Union and Russian Federation. In this context, both parties considered Kaliningrad a pilot region in the EU-Russia relations. The EU Northern Dimension programme promoted during the Finnish Presidency (second half of 1999) was one of the first major initiatives for the Kaliningrad region to take part in the European cooperation space, and that was an attempt to overcome the unfavourable trends resulting from the economic and social disparities between the European Union and neighbouring Russian regions. The initiative covers a wide range of topics related to social, economic and transport problems as well as security issues in the north-eastern part of Europe [6, s. 6—8; 5, s. 347].

The Kaliningrad region's pilot nature in the EU-Russia relations was discussed most intensively since 1999. It should be noted that such a role was attributed to the region by both Russia and the European Union. An important tool for the implementation of the above-mentioned concept was to

⁵ From May to November 2002, the actions of Russia and the European Union led to the so-called 'Kaliningrad crisis', which culminated in signing the agreement on special transit rules, according to which the inhabitants of the Kaliningrad region should be issued special 'travel documents'. See [7, s. 10; 5, s. 351].

raise funds and organisational tools for programmes designed to expand the Polish-Lithuanian-Russian cross-border cooperation through cross-border initiatives co-financed from EU funds.

The EU enlargement and engagement of the Kaliningrad region in the European cooperation gave rise to concerns among some Russian circles about the emergence of differences in the social and economic development of the region compared to other regions of the Russian Federation as a result of cooperation with the entities of the European Union. Given these views the EU came up with various initiatives aimed at deepening cooperation with the Kaliningrad region, which are a kind of tool to develop the identity of the Kaliningrad region as the most western region of Russia. The Russian Federation was concerned about the manifested separatist tendencies in the region, although they were insignificant. It is in that context that Russia sometimes perceives the EU proposals aimed at supporting the social, economic and political relations with the Kaliningrad region [13; 8, p. 181—183; 12, s. 55—57].

Genesis of the Local Border Traffic Mechanism

The need for the introduction of a visa regime for the movement of persons at the external borders of the EU was one of the negative consequences of the EU enlargement in terms of the development of cooperation between the countries of Central and Eastern Europe. The rules relating to the functioning of the Schengen area specify those countries the citizens of which must have a visa of a Member State at the border of the European Union. The Russian Federation is among the countries to which the rule applies as well. On the basis of earlier arrangements, on 1 October 2003 Poland announced the termination of an agreement on visa-free procedures with Russia [24].

To overcome the negative consequences of the EU enlargement to the east, various mechanisms were intended to liberalise the visa policy towards neighbouring countries. One of them concerned entering into visa facilitation agreements. Poland signed a corresponding agreement with the Russian Federation on 25 May 2006. However, the mechanism did not appear to become an effective tool for reducing the negative impact of the EU enlargement to the east, particularly in relation to cooperation at the regional and local levels.

Much more effective mechanisms were the local border traffic agreements, which provide the basis for abolishing visas for residents of the border areas on both sides of the European Union external borders, which pose significant potential for the social, economic and political cooperation. It should be emphasised that an agreement on LBT help establish better social, economic, political and scientific relations between the border communities. Agreements of this type are an exception to the cross-border traffic rule at the external borders of the Schengen zone in accordance with the Schengen Borders Code [11].

The history of the local border traffic can be traced in a series of the European Union policies concerning the visa liberalisation at the external borders of the EU. The first one was the European Commission's communication 'Towards Integrated Management of the External Borders of the Member States of the European Union' published in May 2002. The document attempts to determine the institutional and conceptual framework of the local border traffic treating it as regularly and frequently crossing the border by residents of the border areas [3]. Another paper that creates a legal framework for LBT is the Management plan for the External Borders of the Member States of the European Union adopted by the Council of the European Union and the European Council in June 2002. The Plan takes into account the need for regulation of the local border traffic at the EU law level, in particular in the context of the expected enlargement to the east [18].

As a result of the European Commission initiative, in August 2003 draft laws governing LBT at the external European Union borders were presented. In turn, the so-called Hague Programme endorsed by the European Council in the Hague on 4 November 2005 set goals in the development of security and justice as a further step towards the establishment of a European policy on the management of the external EU borders. The Programme included the gradual establishment of an integrated external border management system and strengthening the border control and surveillance [14].

The rules directly related to local border traffic were included in the Regulation of the European Parliament and of the Council 1931/2006 of 20 December 2006 which establishes the LBT rules at the external borders of the European Union [10]. On the basis of the Regulation a unique solution concerning the general rules for the control at the external EU borders as set out in the Schengen Borders Code is implemented. The Regulation provisions allow the EU States to enter into bilateral agreements with neighbouring countries thus facilitating the cross-border cooperation in the social and economic purposes or for cultural exchange. On the basis of such agreements, the citizens of neighbouring countries who live in the border areas (30 or 50 kilometers from the border) can obtain special documents allowing regular crossing the border for a short stay in the border area of the EU Member State [10].

Residents of the areas covered by local border traffic can receive a special document (permit) for crossing the border without a visa. It should be noted that at present all the EU's eastern neighbours including Russia enjoy the privilege in accordance with European Union Council Regulation number 539/2001 on March 15, 2001. The residents of border areas who have received permission to cross the border as LBT fail to meet a number of requirements related to the stay in the border area including e.g. the availability of sufficient funds for stay abroad or the presentation of documents confirming the purpose of crossing the border.

Further benefits are related to the duration of stay in the border area of the neighbouring country, as well as the border crossing formalities. An

important advantage is a certain time of stay in the border area of the neighbouring country, 90 days. Other benefits listed in the Regulation No 1931/2006 the possibility of obtaining free permits to cross the border under LBT, the validity of which is from 1 to 5 years, the establishment of new border crossings for local border traffic as well as the arrangements for special lanes at the existing crossings for the needs of LBT [10].

At present, local border traffic agreements are concluded as follows, between Hungary and Ukraine (December 2007), Poland and Ukraine (March 2008), Slovakia and Ukraine (May 2008), Romania and Moldova (November 2009), Poland and the Republic of Belarus (February 2010), Latvia and the Republic of Belarus (August 2010), Lithuania and Belarus (October 2010), Latvia and Russia (December 2010), Russia and Norway (November 2010) as well as between Romania and Ukraine (April 2014).

The provisions of the Polish-Russian local border traffic agreement

Signing the agreement on local border traffic for the powiats of the Warmia and Mazury and Pomeranian voivodships and the Kaliningrad region was one of the key events during the Polish Presidency of the Council of the European Union in the second half of 2011. The work on the introduction of a simplified border travel procedure between Poland and the Kaliningrad region of Russia was commissioned after a joint request to the European Commission by Ministers of Foreign Affairs of Poland and Russia, R. Sikorski and Lavrov on 6 April 2010 concerning inclusion in the LBT mechanism the whole of Kaliningrad region and the corresponding areas in Poland. As a result, on 29 July 2011, the European Commission passed to the Council and the European Parliament a proposal to introduce simplified visa procedures on the Polish-Russian border. The document provided for the abolition of the necessity of obtaining visas for Russian citizens living in the Kaliningrad region. In connection with the territorial, economic and social integrity of the entire Kaliningrad region, the whole of it (as well as a similar territory in Poland) was recognised as a border area. That was a significant departure from the practice of recognising as a border zone territory of up to 30 or 50 km from the border. The Council of Ministers of Interior and Justice of the EU during a meeting on 27 October 2011 adopted the draft agreement on local border traffic with the Kaliningrad region. The draft agreement required the approval of the European Parliament. The draft document was adopted at the meeting held on 1 December 2011. The European Parliament resolution on the draft agreement was adopted by an overwhelming majority. That made it possible to proceed with signing the agreement by representatives of the Republic of Poland and the Russian Federation.

The agreement was signed during the meeting of R. Sikorski and S. Lavrov held in Moscow on 14 December 2011. According to representatives of both parties, it became a 'milestone' in the relations between the two countries and peoples, and in the future it will contribute to more active

cooperation between the Kaliningrad region and the European Union. The agreement was an important event marking the closure of the Polish Presidency in the Council of the European Union. According to Minister Sikorski, signing the local border traffic agreement in Moscow between the Kaliningrad region and part of the Pomeranian voivodship, Warmia and Mazury is one of the achievements of the Polish Presidency (in the Council of the European Union. — *K. Zh.*). In turn, the Russian Foreign Minister expressed hope that the agreement on visa-free procedures will become 'a harbinger of an imminent transition to an open exchange of visits of the Russians (in the EU) as well as citizens of the Schengen area to Russia under this visa-free scheme'. Minister Lavrov also noted that the agreement 'may become a precursor of a full visa-free regime between Russia and the European Union'. Both sides expressed hope that the Kaliningrad region would continue to be a pilot region in EU-Russia relations [9].

The agreement came into force on 27 July 2012. In accordance with the agreement, residents of the border areas of both countries can repeatedly cross the Polish-Russian border on the basis of a special travel document. In Poland, the visa waiver programme covered some areas in the Pomeranian voivodship, the cities of Gdynia, Gdansk, Sopot and some powiats (districts): Puck, Gdansk, and Nowy Dwor and Malbork; in the Warmian-Mazurian voivodship, the cities of Elblag and Olsztyn, the powiats (districts) of Elblag, Braniewo, Lidzbark, Bartoszyce, Olsztyn, Ketrzyn, Mragowo, Węgorzewo, Gizycko, Golda and Olecko.

The border area includes the Kaliningrad region as well as territories adjoining the border on the Polish side, most of which are within the 50-kilometer border zone, in accordance with previous agreements of the European Commission and the Council of the European Union. The border area includes cities and towns with the rights of a powiat (district), i.e. Elblag, Gdansk, Gdynia, Sopot and Olsztyn. The document permitting repeated crossing the Polish-Russian border is a special permit issued to inhabitants of the border zone and giving the right to multiple entries, exits and stay in the border area. The permit fee is about 20 euros. It is issued for a period of 2 years and 5 years. New rules for local border traffic also cover third-country nationals living in the Kaliningrad region and the Polish border area [21]. First travel documents entitling them to cross the border without a visa were issued in August 2012.

Conclusion

The relatively short term of the agreement shows that the local border traffic at the Polish-Russian border creates a number of tangible advantages for the residents of the border area, strengthening social, cultural, tourist and economic contacts. It should be noted that the agreement facilitates the development of tourism in the northern part of Poland and the Kaliningrad region. It may also contribute to the economic development of the Kaliningrad region and become a laboratory of change in the visa procedure for citizens of the Russian Federation. At the same time, according to

experts, the liberalisation of the visa procedures does not lead to a significant increase in economic exchange between Poland and Russia as no measures to facilitate the transportation of goods across the Polish-Russian border were introduced. The present passport control procedure is also maintained at the Polish-Russian border crossings. The economic environment for European Union companies in the Kaliningrad region has not changed, which is a significant obstacle to the development of economic relations with the region.

The local border traffic agreement has become one of the most important developments in the relations between the EU and Russia in recent years. The agreement was also one of the main highlights of the Polish Presidency in the EU Council in the second half of 2011. Factors affecting the development of multilateral relations with the Kaliningrad region are described in most documents related to the objectives of the Polish Presidency. Some substantial commitments and decisions were taken to activate cooperation with the Kaliningrad region and deepen the political dialogue with Russia. Let us hope that signing the local border traffic agreement with Russia will become an important impetus to the Polish-Russian economic and social relations. However, a number of important issues in relations between the European Union and Russian Federation should be taken into account. Not only the end of the dialogue between the European and Russian leaders as a result of the political and social unrest in Ukraine but also previously suspended consultations on a new partnership and cooperation agreement (PCA 2) can be an indication of cooling relations between Russia and the European Union. Under these conditions, the local border traffic agreement is indeed a success. [16] Conclusion of a new agreement between Russia and the European Union on partnership and cooperation (which can not be expected in the near future in the current situation) can provide a real basis for further development of the EU-Russia cooperation on the Kaliningrad region.

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